

S/N 10/021,392

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Brian Dewey et al.	Examiner:	Cam Y. T. Truong
Serial No.:	10/021,392	Group Art Unit:	2162
Filed:	December 12, 2001	Docket No.:	14917.415US01; 164055.01
Title:	SYSTEM AND METHOD FOR PROVIDING ACCESS TO CONSISTENT POINT-IN-TIME FILE VERSIONS		

PROPRIETARY MATERIAL SUBMITTED PURSUANT TO MPEP § 724.02

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

With regard to the above-identified application, the items enclosed in the attached sealed envelope(s) ("Disclosed Documents") are submitted pursuant to MPEP § 724.02 as being proprietary pursuant to a legal obligation in: Commission of European Communities vs. Microsoft, Case No. COMP/C-3/37792 (hereafter, "Litigation"). For convenience, Exhibit A attached hereto lists all of the Disclosed Documents. A petition to expunge the Disclosed Documents is filed separately and concurrently herewith.

The Litigation involves antitrust laws in Europe, and the assignee of the present application ("Assignee") was asked to demonstrate innovation in certain technology in order to support a licensing price schedule. In this context, the Assignee mapped patents, patent applications, and trade-secrets to the technology being licensed. The Assignee also exchanged written papers with the governmental tribunal in Europe prosecuting the Litigation – the Commission of European Communities ("Commission"). During the Litigation, the Assignee, Commission, and certain third parties produced written correspondence that discussed the validity, scope, patentability, and/or innovation embodied in the subject patents, patent applications, and trade secrets. The Disclosed Documents comprise some of that correspondence, and the above-identified application has been identified as related to the Litigation.

Although not subject to a “protective order” in the sense that term is used in U.S. litigation, the Disclosed Documents are proprietary pursuant to the rules of the Commission, and not to be shared with third parties outside of the Litigation. The Commission granted Assignee permission to provide the Disclosed Documents to the USPTO pursuant to MPEP § 724.02. Pursuant to its rules, however, the Commission indicated that it is not able to grant Assignee permission to disclose certain other proprietary Litigation documents (collectively, “Undisclosed Documents”). The Assignee informed the Commission of procedures available under MPEP § 724, but the Commission indicated that it did not have the ability to grant permission to disclose the Undisclosed Documents, even pursuant to such procedures. Applicants make no representation as to the materiality of the Undisclosed Documents; however, to the extent the Undisclosed Documents identify potentially relevant references, Applicants believe that such references have been or will be submitted pursuant to a separate Information Disclosure Statement. The Examiner is invited to contact the undersigned at any time to discuss the Disclosed Documents, the Litigation, or the statements made herein.

The Examiner is invited to review all of the Disclosed Documents thoroughly. In some instances, Exhibit A notes specific page or section numbers with respect to the Disclosed Documents. Such page or section citations are not intended to be limiting; nor are they intended to imply that such pages or sections are material or that other pages or sections may be immaterial. Rather, for the convenience of the Examiner, such citations are provided to pages or sections that Applicants are aware may discuss the present application or related technology. In addition, some Disclosed Documents may be cumulative but are disclosed to provide the Examiner a fuller context of the Litigation proceedings. Full consideration of the items listed is respectfully requested.

This submission should be considered because it is submitted before the mailing date of the Notice of Allowance under 37 CFR § 1.311.

No representation is made that a reference is “prior art” within the meaning of 35 U.S.C. §§ 102 and 103 and Applicants reserve the right, pursuant to 37 C.F.R. § 1.131 or otherwise, to establish that the reference(s) are not “prior art.” Moreover, Applicants do not represent that a reference has been thoroughly reviewed or that any relevance of any portion of a reference is intended.

In addition, Applicants note that Applicants' agent conferred by phone with Ms. Terri Dye of the Office of Patent Legal Administration in the USPTO on November 9, 2007. Ms. Dye indicated that the Disclosed References need not be submitted as part of an Information Disclosure Statement or on a Form 1449. Rather, Ms. Dye indicated that submission under MPEP § 724.02 with a petition to expunge under MPEP § 724.05 was sufficient to ensure the Examiner will consider the Disclosed Documents, thereby satisfying Applicants' duties of candor and good faith pursuant to 37 CFR § 1.56. If an Information Disclosure Statement under 37 CFR §§ 197, 198 is necessary, Applicants ask that the undersigned be informed as soon as possible so that appropriate steps may be taken.

No fees are believed due with this submission; however, please charge any additional fees or credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

Dated: November 14, 2007



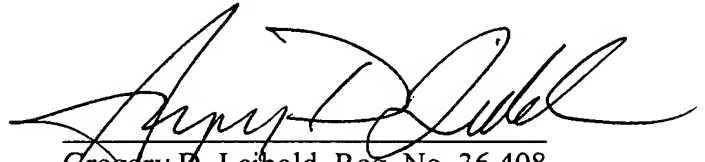

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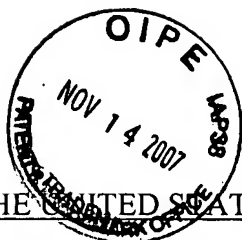
Exhibit A

List of Materials Submitted Under Seal Pursuant to MPEP § 724.02

	<p>Scull, Timothy B. <i>Opinion re: Consolidated Report on Patents and Patent Applications Covering the WSPP Protocols</i>. Letter from Bradford L. Smith to Philip Lowe re: Case No. COMP/C-3/37.792 (Microsoft Corporation) - Annex 4; December 14, 2005; pp. pp. 20-21.</p>
	<p>Microsoft Corporation. <i>Innovation Report Microsoft Server Message Block (SMB) Protocol and Extensions</i>. July 31, 2006; pp. 1-50.</p>
	<p>Microsoft Corporation. <i>Innovation Report Server Message Block 2.0 Protocol Specification</i>. July 31, 2006; pp. 1-35.</p>
	<p>Knauer, Reinhard. <i>Report on European Patents and Applications Corresponding to U.S. Patents and Applications Cited in Microsoft's 31 July 2006 Innovation Reports</i>. Appendix A,B, D and E; August 21, 2006.</p>
	<p>Advisors to the Monitoring Trustee. <i>Summary Review of Microsoft Innovation Claims - (SCNA and SMB2)</i>. Annex I to the Statement of Objections in Case 37792; February 22, 2007; pp. 19.</p>
	<p>Advisors to the Monitoring Trustee. <i>Summary Review of Microsoft Innovation Claims - Microsoft Claimed Innovations Related to SMB2 (SMB2)</i>. Annex 5; February 22, 2007; Part 1, Section 4.</p>
	<p>Advisors to the Monitoring Trustee. <i>Summary Review of Microsoft Innovation Claims - Microsoft Server Message Block Protocol and Extensions (SMB)</i>. Annex 5; February 22, 2007; Part 2, Section 29.</p>
	<p>Advisors to the Monitoring Trustee. <i>Summary Review of Microsoft Innovation Claims - (SMB, SMB2 and SCNA)</i>. Annex 4; February 22, 2007.</p>
	<p>Advisors to the Monitoring Trustee. <i>Summary Review of Microsoft Innovation Claims - Microsoft Claimed Innovations Related to SMB2 (SMB2)</i>. March 3, 2007; Part 1, Section 4.</p>
	<p>Advisors to the Monitoring Trustee. <i>Summary Review of Microsoft Innovation Claims - Microsoft Server Message Block Protocol and Extensions (SMB)</i>. March 3, 2007; Part 2, Section 30.</p>

	Microsoft Corporation. <i>Innovations in Microsoft's Server Message Block Protocol and Extensions (SMB)</i> . Filed April 23, 2007; pp. 1-11.
	Microsoft Corporation. <i>Innovations in Server Message Block 2.0 Protocol Extensions (SMB2)</i> . Filed April 23, 2007; pp. 1-9.
	Musker, David. <i>State Marshaling Source - SMB Extensions</i> . Received June 1, 2007; pp. 3-4.
	Microsoft Corporation. <i>Microsoft's Comments on the "Trustee Summary Review of Microsoft Innovation Claims" dated 3 March 2007</i> . Appendix A; June 11, 2007; pp. 30-31 and 78-79.
	Monitoring Trustee. <i>Reply to Microsoft Response to the Statement of Objections (SO) Case 37792 - (SMB) Server Message Block Protocol and Extensions (SMB) and (SMB2) Server Message Block 2 (SMB2)</i> . July 8, 2007; Sections 42 and 43.
	Monitoring Trustee. <i>Reply to Microsoft Response to the Statement of Objections (SO) Case 37792 - (SCNA and SMB2)</i> . The Commission's Assessment of Microsoft's Innovation Claims (Annex Table); July 8, 2007; pp. 55-56.
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	Microsoft Corporation. <i>Microsoft's Supplemental Comments on the "Trustee Summary Review of Microsoft Innovation Claims" dated 3 March 2007</i> . Filed July 13, 2007; Section XVII, pp. 33, 84-87.
	Microsoft Corporation. <i>Reply to Arguments Regarding Server Message Block Protocol and Extensions (SMB)</i> . Filed August 31, 2007; pp. 1-9.
	Microsoft Corporation. <i>Reply to Arguments Regarding Server Message Block 2.0 Protocol Extensions (SMB2)</i> . Filed August 31, 2007; pp. 1-4.

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Title:	SYSTEM AND METHOD FOR PROVIDING ACCESS TO CONSISTENT POINT-IN-TIME FILE VERSIONS		

PETITION TO EXPUNGE PURSUANT TO 37 CFR § 1.59 & MPEP § 724.05

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

With regard to the above-identified application, the documents listed on Exhibit A hereto ("Materials") were submitted concurrently herewith in sealed envelope(s) pursuant to MPEP § 724.02. To the extent that any of the Materials are found not to be important to a reasonable examiner in deciding upon patentability ("Criteria"), Petitioner requests that all of the Materials, or any portion of such Materials not meeting the Criteria, be expunged and removed from the official file for the above-referenced application.

Pursuant to MPEP § 724.05, Petitioner makes the following statements:

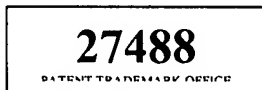
1. The materials are proprietary subject to a legal obligation in: Commission of European Communities vs. Microsoft, Case No. COMP/C-3/37792 (hereafter, "Litigation");
2. The Materials have not otherwise been made public;
3. Petitioner commits to retain the Materials for the period of any patent with regard to which the Materials are submitted;
4. This petition to expunge is being made on behalf of the party in interest on whose behalf the Materials were submitted; and
5. The appropriate fee, as set forth in 37 C.F.R. § 1.17(g), should be charged for a large entity to Deposit Account No. 13-2725.

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Please contact the undersigned if any further information is needed with respect to this petition. Please charge any additional fees or credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

Dated: November 14, 2007





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